



November 14, 2001

Ms. Nancy Nelson  
Associate Vice President  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2001-5276

Dear Ms. Nelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154943.

El Paso Community College (the "college") received a request for information relating to Internal Vigilance, Inc. ("Internal Vigilance"), for the period of August 1 through August 28, 2001, including (1) notifications of ongoing investigations by Internal Vigilance not paid or billed, subject matter, and names of people being investigated; (2) itemized records of services provided to the college by Internal Vigilance, including names of individuals interviewed, subject matter, and length of time of the interview; and (3) names of outside agencies consulted by Internal Vigilance in connection with its investigations and billing for outside agencies. You claim that information contained in Internal Vigilance's August, 2001, billing statements is excepted from disclosure under sections 552.103 and 552.108 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. We have considered the exceptions you raise and have reviewed the information you submitted. We assume that the college has released any other responsive information that existed when this request was received. If not, then the college must do so at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).*

You point out that this office previously addressed a request for information relating to Internal Vigilance in Open Records Letter No. 2001-3762 (2001). You inform us, however, that the present request does not involve the same information that the previous ruling addressed. Therefore, Open Records Letter No. 2001-3762 (2001) does not constitute a previous determination with respect to the submitted information. *See Open Records Decision No. 673 at 6-7 (2001)* (explaining that attorney general decision constitutes previous determination under Gov't Code § 552.301(a) where (1) precisely the same records

or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

You claim that information contained in the submitted billing statements is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We note, however, that these documents are subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3) (emphasis added). As the billing statements are subject to section 552.022(a)(3), information contained in these documents may be withheld from disclosure only if it is expressly confidential under other law. Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. As such, these exceptions are not other law that makes information confidential for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the college may not withhold any of the information contained in the billing statements under sections 552.103 or 552.108.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law," including information that another statute makes confidential. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining "personally identifiable information").

Section 552.026 incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A); *see also* 34 C.F.R. § 99.3 (defining "education records"). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978).<sup>1</sup>

You represent to this office that one of the submitted billing statements contains the name of a student of the college. You have provided documentation of this individual's status as a student. Therefore, the college may disclose this individual's name only if FERPA permits the college to do so.

In summary, the college may not withhold information contained in the submitted billing statements under sections 552.103 or 552.108 of the Government Code. The college may disclose the student's name only if FERPA permits the disclosure of that information. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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<sup>1</sup>In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

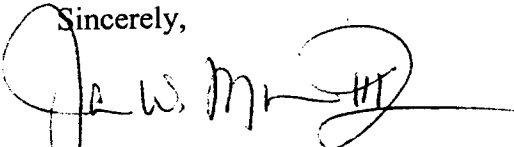
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 154943

Enc: Submitted documents

c: Ms. Isela Castanon-Williams  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500  
(w/o enclosures)